IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3565 OF 2001

M/s.Harileela Process House
Pvt. Ltd. & Others .. Petitioners.
V/s.
Union of India & Others .. Respondents.

Mr.M. Sanklecha with Mr.K.K. Tated for the petitioners.
Mr.R.V. Deai, senior advocate with Mr.P.S. Jetly for the respondent.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 27TH FEBRUARY, 2006.

P.C. :

1. This petition arises out of the order passed by CEGAT on 18th June, 2001 dismissing the appeal filed by the petitioner for non compliance of the pre-deposit order dated 16th March, 2001.

2. In the present case, the Deputy Commissioner of Central Excise by his order dated 9th February, 2000 had levied penalty under Rule 96 ZQ(5)(i) of the Central Excise Rules, 1944 amounting to Rs.29,50,000/- being the equivalent of the amount of duty belatedly paid by the petitioner. In appeal, the Commissioner (A) directed the petitioner to deposit the entire amount of penalty. On failure to deposit, the appeal was dismissed. On further appeal, the Tribunal directed the petitioner to deposit Rs.5 lakhs. The petitioner failed to deposit

the amount and, therefore, the appeal was dismissed.

3. Mr.Sanklecha, learned counsel appearing on behalf of the petitioner brought to our notice the decision of the Apex Court in the case of State of Madhya Pradesh V/s. Bharat Heavy Electricals [1998 (99) E.L.T. 33 (S.C.)], decision of the Gujarat High Court in the case of Ambuja Synthetics Mills V/s. Union of India [2004(175) E.L.T. 85 (Guj.)] and also the decision of the Tribunal in the case of Commissioner of Central Excise, Mumbai-V V/s. Kavya Processors reported in [2004 (168) E.L.T. 124 (Tri. - Mumbai)]. In all those cases, it is held that the penalty leviable need not be equivalent to the duty and the discretion is available to the adjudicating authority to levy lesser penalty. In the present case, Mr.Sanklecha submitted that the adjudicating authority was not justified in levying the penalty equivalent to the amount of duty especially when the delay in payment was only between 1 to 15 days.

4. Having regard to the aforesaid decisions relied upon by the learned counsel for the petitioner and having regard to the failure on the part of the petitioner to comply with the order of pre-deposit, in our opinion, the interest of justice would be met by setting aside the impugned order passed by the

CEGAT dated 18th June, 2001 and also the order in original dated 16th March, 2001 and remand the matter back to the adjudicating authority to determine the penalty afresh subject to the petitioner depositing with the respondent a sum of Rs.5,00,000/- as ordered by the Tribunal.

5. Mr.Sanklecha brought to our notice that while admitting this petition, this Court by its order dated 13th August, 2001 had directed the petitioner to deposit a sum of Rs.20,000/- with the department. Accordingly, the petitioner has deposited an amount of Rs.20,000/- with the department.

6. In this view of the matter, we direct the petitioner to deposit the balance amount of Rs.4,80,000/- within four weeks from today. On such deposit being made, the order-in-original passed on 16th March, 2001 and all other orders passed in appeal including the order passed by the tribunal dated 18th June, 2001 shall stand quashed and set aside. It is made clear that the order is set aside only with reference to levy of penalty under Section 96 ZQ(5)(i) of the Central Excise Rules, 1944. If the petitioner fails to deposit the amount within the time stipulated herein, the petition shall stand

dismissed.

7. On such deposit, the proper officer is directed to pass appropriate order as expeditiously as possible and in any event within a period of 12 weeks from today.

8. The writ petition stands disposed of accordingly, with no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)